

Appl. No. 09/408861

REMARKS**Status of the Claims**

Claims 31-37, 43-54, and 66-81 are pending. Claims 38-42 and 55-65 are canceled. Claims 66-81 are added. Support for the added claims can be found expressly, implicitly, and/or inherently throughout the disclosure, and are based on previously pending claims 31-37, and 43-46. Thus, no new matter is added in the above amendment. Finally, Applicants acknowledge that the Examiner allowed pending claims 47-54 in the previous Office Action.

Examiner Interview Summary

The Examiner conducted an interview with an Applicant and Applicant's representative at the USPTO on November 28, 2001. The summary of the interview is correctly described on the Examiner Interview Summary Form, of record in the file.

The differences in the prior art and the invention as claimed were discussed in detail. Furthermore, the above amendments were discussed. An understanding with respect to the cited prior art and the claims as amended above was reached, and Examiner Gibson agreed to carefully review this Amendment.

The time and consideration of the Examiner during the interview were appreciated.

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Now turning to the official Office Action, the issues raised therein are discussed in turn, below.

Issues under 35 U.S.C. § 102

Claims 31, 37, and 43 are rejected under 35 U.S.C § 102(b) as being allegedly anticipated by Zafirogou (U.S. Patent No. 4,897,297). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The '297 Patent discloses a compress that is made from an elastic fabric and comprises a hydrogel-forming polymeric material. The absorbent polymer filler material may be particulate, and may be accompanied by a diluent filling material.

However, the '297 Patent fails to disclose or suggest the fiberfill hatting and polymeric fibers and/or particles of the composite material in the claimed method. Additionally, the '297 Patent fails to disclose or suggest the evaporative cooling method of the present invention. This deficiency was discussed during the interview. As noted in the Examples (at col. 6), the articles of '297 showed no evaporation after one hour, or insignificant evaporation after 8 hours. Furthermore, the samples are placed in a hot-air oven for 12 hours for drying to return the samples to their original weight.

In order to anticipate a claim, the each and every element as set forth in the claim must be found, either expressly or inherently in the reference. Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Applicants

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respectfully submit that the '297 Patent does not meet this requirement. Accordingly, Applicants request that this rejection be withdrawn.

Issues under 35 U.S.C. § 103

Claim 32 is rejected under 35 U.S.C § 103(a) as being allegedly obvious over the '297 patent in view of Silvas (U.S. Patent No. 5,755,110). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The deficiencies of the '297 Patent are discussed above.

Silvas discloses a cooling vest having elongated pocket partitions formed on the front side and back side vest portions. The pockets are for cooling beads that absorb water. The beads are granular.

Silvas fails to disclose or suggest a method of cooling incorporating a composite that comprises a filler layer as claimed.

Furthermore, it would not be obvious to combine the two cited references to arrive at the claimed invention because of the inconsistent features discussed at the interview. For example, the '297 Patent does not cool by evaporation, and is elastic. Silvas also fails to disclose the fiberfill batting.

In order to establish a *prima facie* case of obviousness, there must some suggestion or motivation to combine the references to arrive at all of the claim limitations with a reasonable expectation of success. In view of the deficiencies

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discussed above and during the interview, Applicants respectfully submit that a *prima facie* case of obviousness cannot be established by the asserted references.

Accordingly, Applicants respectfully submit that the rejection be withdrawn.

Claims 33 and 38 are rejected 35 U.S.C. § 103(a) as being allegedly obvious over the '297 patent. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested. The deficiencies of the '297 Patent are discussed above, and Applicants respectfully submit that, based on the standards of establishing a *prima facie* case of obviousness, these claims should be allowable.

Furthermore, claim 33 is dependent on claim 31, which should be allowable for the reasons stated above. Since claim 33 would then depend from, and incorporate all the features of, an allowable claim, it should be allowable as well. Claim 38 also includes an evaporative cooling feature of claim 31 that distinguishes over the cited prior art.

Accordingly, Applicants respectfully submit that this rejection should be withdrawn.

Claims 34-36 are rejected under 35 U.S.C. § 103(a) as being allegedly obvious over the '297 patent in view of Sawanishi et al. (U.S. Patent No. 4,562,114). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested. These claims depend from claim 31, which should be allowable for the reasons stated above. Since claims 34-36 would then depend from, and incorporate all the features of, an allowable claim, it should be allowable as well.

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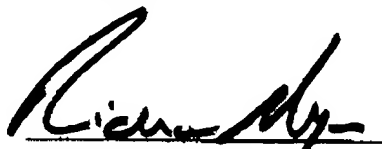
Accordingly, Applicants respectfully submit that this rejection should be withdrawn.

From the foregoing, further and favorable reconsideration in the form of a Notice of Allowance is believed to be in order and such action is earnestly solicited.

In the interest of expediting the prosecution of this application, if there are any questions concerning this amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned at the number listed below.

Please charge any fees or credit any overpayment pursuant to 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 23-0035.

Respectfully submitted,



Richard S. Myers, Jr.
Registration No. 42,022
WADDEY & PATTERSON
A Professional Corporation
414 Union Street, Suite 2020
Bank of America Plaza
Nashville, TN 37219
(615) 242-2400
ATTORNEY FOR APPLICANT

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